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States' Wetlands Permitting Statutes:

Indiana



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A National Agricultural Law Center Research Publication States' Wetlands Permitting Statutes: Indiana

IN Code §§ 13-18-22-1 to 13-18-22-12

Current with all legislation of the 2024 Second Regular Session of the 123rd General Assembly.

IN Code § 13-18-22-1. Permit required for wetland activities; exceptions; goals of permitting program.

(a) Except as provided in subsection (b), a person proposing a wetland activity in a state regulated wetland must obtain a permit under this chapter to authorize the wetland activity.

(b) A permit is not required for the following wetland activities:

(1) The discharge of dirt, sand, rock, stone, concrete, or other inert fill materials in a de minimis amount.

(2) A wetland activity at a surface coal mine for which the department of natural resources has approved a plan to:

(A) minimize, to the extent practical using best technology currently available, disturbances and adverse effects on fish and wildlife;

(B) otherwise effectuate environmental values; and

(C) enhance those values where practicable.

(3) Any activity listed under Section 404(f) of the Clean Water Act, including:

(A) normal farming, silviculture, and ranching activities, such as plowing, seeding, cultivating, minor drainage, harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices;

(B) maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, and bridge abutments or approaches, and transportation structures;



(C) construction or maintenance of farm or stock ponds or irrigation ditches, or the maintenance of drainage ditches;

(D) construction of temporary sedimentation basins on a construction site that does not include placement of fill material into the navigable waters; and

(E) construction or maintenance of farm roads or forest roads, or temporary roads for moving mining equipment, where the roads are constructed and maintained, in accordance with best management practices, to assure that:

(i) flow and circulation patterns and chemical and biological characteristics of the navigable waters are not impaired;

(ii) the reach of the navigable waters is not reduced; and

(iii) any adverse effect on the aquatic environment will be otherwise minimized.

(4) The maintenance or reconstruction (as defined in IC 36-9-27-2) of a regulated drain in accordance with IC 36-9-27-29(2) as long as the work takes place within the current easement, and the reconstruction does not substantially change the characteristics of the drain to perform the function for which it was designed and constructed.

(5) Wetland activities in an exempt isolated wetland, as defined in IC 13-11-2-74.5.

(6) Dredge and fill activities in an ephemeral stream, as defined in IC 13-11-2-72.4.

(7) The activities of a forestry operation that are:

(A) conducted in compliance with the Indiana Logging and Forestry Best Management Practices Field Guide published by the department of natural resources; and

(B) confined to a waterway that has a watershed not greater than ten (10) square miles.

A state permit will be required if there are permanent negative impacts to isolated wetlands outside of a waterway or the activities conducted fail



to comply with the Indiana Logging and Forestry Best Management Practices Field Guide.

(c) The conversion of cropland, as defined in IC 13-11-2-48.5, to housing does not require a permit under this chapter if the cropland has been used for agricultural purposes:

- (1) in the five (5) years immediately preceding the development; or
- (2) in the ten (10) years immediately preceding the development, if the United States Army Corps of Engineers has issued a jurisdictional determination confirming that the cropland does not contain wetlands subject to federal jurisdiction under Section 404 of the Clean Water Act.

After receiving a jurisdictional determination described in subdivision (2) from the United States Army Corps of Engineers, the department shall notify the person proposing the wetland activity that the development of the cropland used for agricultural purposes in the immediately preceding ten (10) years is exempt from the permit requirement of subsection (a) under subdivision (2).

IN Code § 13-18-22-2. Classification of restored wetlands.

The classification of an isolated wetland that is based on the level of disturbance of the wetland by human activity or development may be improved to a higher numeric class if an action is taken to restore the isolated wetland, in full or in part, to the conditions that existed on the isolated wetland before the disturbance occurred.

IN Code § 13-18-22-3. Individual permits.

(a) The following shall be authorized by an individual permit:

- (1) Wetland activity in a nonexempt Class II wetland that does not qualify for a general permit under section 4 of this chapter.
- (2) Wetland activity in a Class III wetland.

(b) The board may adopt rules under IC 4-22-2 and IC 13-14 to govern the issuance of individual permits by the department under subsection (a).

IN Code § 13-18-22-4. General permits.

(a) The following shall be authorized by a general permit:



(1) The maintenance of a field tile within a Class II wetland. However, the maintenance described in this subdivision may be authorized only if the field tile:

(A) is necessary to restore drainage of land adjacent to the wetland; and

(B) does not have the effect of draining the wetland.

(2) Dredge and fill activities with minimal impact that are at or below impact thresholds, including the activities analogous to those allowed under the nationwide permit program (as published in 67 Fed. Reg. 2077-2089 (2002)).

(b) The maintenance of a field tile in a Class I wetland does not require a permit.

(c) The board may adopt rules under IC 4-22-2 and IC 13-14 to establish and implement the general permits described in subsection (a).

(d) The department may not authorize a wetlands activity described in subsection (a) unless the applicant:

(1) identifies the water to be affected by the activity; and

(2) provides a compensatory mitigation plan as set forth in section 6 of this chapter.

IN Code § 13-18-22-5. Applicant requirements.

(a) An applicant for a permit issued under this chapter:

(1) must demonstrate, as a prerequisite to the issuance of the permit, that wetland activity:

(A) is:

(i) without reasonable alternative; and

(ii) reasonably necessary or appropriate; to achieve a legitimate use proposed by the applicant on the property on which the wetland is located; and

(B) for a Class III wetland, is without practical alternative and will be accompanied by taking steps that are practicable and appropriate to minimize potential adverse impacts of the discharge on the aquatic ecosystem of the wetland; and



(2) except as provided in subsection (b), must establish that compensatory mitigation will be provided as set forth in section 6 of this chapter to reasonably offset the loss of wetlands allowed by the permits.

The department or the board may prescribe additional conditions on applicants that are reasonable and necessary to carry out the purposes of this chapter.

(b) The commissioner may approve exceptions to compensatory mitigation in specific, limited circumstances.

(c) For purposes of subsection (a)(1)(A):

(1) a resolution of the executive of the county or municipality in which the wetland is located; or

(2) a permit or other approval from a local government entity having authority over the proposed use of the property on which the wetland is located;

that includes a specific finding that the wetland activity is as described in subsection (a)(1)(A) is considered conclusive evidence of that fact.

IN Code § 13-18-22-6. Compensatory mitigation.

(a) Except as otherwise specified in subsections (b), (c), (e), (f), and (h), compensatory mitigation shall be provided in accordance with the following table:

Wetland Replacement		On-site	Off-site	
Class	Class	In-lieu Fee Ratio	Ratio	
Class II	Class II or III	Nonforested	1.5 to 1	2 to 1
		Forested	2 to 1	2.5 to 1
Class III	Class III	Nonforested	2 to 1	2.5 to 1
		Forested	2.5 to 1	3 to 1

(b) The compensatory mitigation ratio shall be lowered to one to one (1:1) if the compensatory mitigation is completed before the initiation of the wetland activity.



(c) A wetland that is created or restored as a water of the United States may be used, as an alternative to the creation or restoration of an isolated wetland, as compensatory mitigation for purposes of this section. The replacement class of a wetland that is a water of the United States shall be determined by applying the characteristics of a Class I, Class II, or Class III wetland, as appropriate, to the replacement wetland as if it were an isolated wetland.

(d) The off-site location of compensatory mitigation must be:

(1) within:

(A) the same eight (8) digit U.S. Geological Service hydrologic unit code; or

(B) the same county;

as the isolated wetlands subject to the authorized wetland activity; or

(2) within a designated service area established in an in lieu fee mitigation program approved by the department.

(e) For purposes of satisfying subsection (a), compensatory mitigation may consist of:

(1) one (1) or a combination of the following:

(A) Creation or restoration of a wetland by the permittee.

(B) Bank credits.

(C) In lieu fee credits; or

(2) a combination of creation or restoration and preservation methods such that:

(A) creation or restoration of a wetland by the permittee accounts for at least a one to one (1:1) ratio of mitigation; and

(B) preservation of a wetland by the permittee, under subsection (h), accounts for any remaining mitigation required under subsection (a).

(f) An exempt isolated wetland:

(1) may be considered a created or restored wetland for purposes of subsection (e)(1)(A) and (e)(2)(A); and



(2) if so considered, shall receive compensatory mitigation credit as follows:

(A) A Class I wetland may be enhanced to a Class II wetland by the permittee and used for mitigation credit for impacts to Class II wetland at the following ratios:

(i) One to one (1:1) if the enhancement occurs prior to impacts.

(ii) Two to one (2:1) if the enhancement occurs after permitting.

(B) If the mitigation wetland is the same or a higher classification than the impacted wetland, the mitigation wetland credit ratio is one to one (1:1).

(C) Except as provided in clause (A), if the mitigation wetland is a lower classification than the impacted wetland, then mitigation credit shall be given in accordance with the following ratios:

Mitigation Wetland	Impact Wetland	Mitigation Credit Ratio (Acres of Mitigation: Acres of Credit)
Class I	Class II	3 to 1
Class II	Class III	4 to 1

(g) An exempt isolated wetland that is used to provide compensatory mitigation under subsection (f) becomes state regulated wetland.

(h) A nonexempt, Class II or Class III isolated wetland that is not impacted and that is protected with a deed restriction or conservation easement:

(1) may be preserved for purposes of subsection (e)(2)(B) so long as the nonexempt, Class II or Class III isolated wetland is the same or a higher classification as the impacted wetland; and

(2) if the condition in subdivision (1) is met, shall receive compensatory mitigation credit as follows:



Impact -- Wetland Type or Class

Mitigation	Class II	Class II	Class III	Class III
Wetland Type	Nonforested	Forested	Nonforested	Forested
Class II On-Site Nonforested	6 to 1	8 to 1	N/A	N/A
Class II On-site Forested	5 to 1	6 to 1	N/A	N/A
Class II Off-site Nonforested	7 to 1	9 to 1	N/A	N/A
Class II Off-site Forested	6 to 1	7 to 1	N/A	N/A
Class III On-site Nonforested	4 to 1	5.5 to 1	7 to 1	9 to 1
Class III On-site Forested	3 to 1	4.5 to 1	6 to 1	7 to 1
Class III Off-site Nonforested	4.5 to 1	6 to 1	8 to 1	10 to 1
Class III Off-site Forested	3.5 to 1	5 to 1	7 to 1	8 to 1



Off-site

Forested

(i) Unless otherwise specified, compensatory mitigation provided under this section must be protected with a restrictive covenant that is recorded with respect to the property on which the mitigation wetland is located.

IN Code § 13-18-22-7. General duties of department.

(a) The department shall:

(1) administer the permit programs established by this chapter; and

(2) review and issue decisions on applications for permits to undertake wetland activities in state regulated wetlands in accordance with the requirements under this chapter.

(b) The department shall make available to the public a form for use in applying for a permit under this chapter.

IN Code § 13-18-22-8. Permit decision deadlines; statement of reasons for denial.

(a) The department shall make a decision to issue or deny an individual permit under section 3 of this chapter not later than ninety (90) days after receipt of the completed application. If the department fails to make a decision on a permit application by the deadline under this subsection or subsection (d), a permit is considered to have been issued by the department in accordance with the application.

(b) A general permit under section 4 of this chapter becomes effective with respect to a proposed wetland activity that is within the scope of the general permit on the thirty-first day after the department receives a notice of intent from the person proposing the wetland activity that the wetland activity be authorized under the general permit.

(c) The department must support a denial under subsection (a) by a written statement of reasons.

(d) The department may notify the applicant that the completed application referred to in subsection (a) is deficient. If the department fails to give notice to the applicant under this subsection not later than fifteen (15) days after the



department's receipt of the completed application, the application is considered not to have been deficient. After receipt of a notice under this subsection, the applicant may submit an amended application that corrects the deficiency. The department shall make a decision to issue or deny an individual permit under the amended application within a period that ends a number of days after the date the department receives the amended application equal to the remainder of:

- (1) ninety (90) days; minus
- (2) the number of days the department held the initial application before giving a notice of deficiency under this subsection.

IN Code § 13-18-22-9. Designation of wetland as outstanding state protected wetland; duties of owner; recession of designation.

(a) The owner of a Class III wetland may petition the board for designation of the wetland as an outstanding state protected wetland. Upon verification by the board that the wetland is a Class III wetland and that the petitioner is the owner of the wetland, the board shall conduct a proceeding under IC 4-22-2 and IC 13-14 to adopt a rule designating the wetland as an outstanding state protected wetland.

(b) A rule adopted by the board under subsection (a) must specifically identify each wetland to be designated as an outstanding state protected wetland, including:

- (1) the wetland type;
- (2) a legal description of the wetland as delineated; and
- (3) other information considered necessary by the board.

(c) The owner of a Class III wetland designated as an outstanding state protected wetland under this section shall:

(1) not cause or allow any anthropogenic activities on the property on which the wetland is located that may adversely affect or degrade the wetland, except for activities with minimal and short term effect, such as construction of an observation pathway or installation of an underground pipeline that are:

- (A) authorized by rules adopted by the board; or



(B) approved by the department in the absence of rules under clause (A); and

(2) provide for the long term assurance of the protections described in subdivision (1) through:

(A) a restrictive covenant that is recorded with respect to the property on which the delineated wetland is located; or

(B) a grant of title to or a conservation easement in the property on which the delineated wetland is located to:

(i) the department of natural resources; or

(ii) a nonprofit entity with demonstrated ability in the maintenance and protection of wetlands.

(d) Notwithstanding the designation of a wetland under this section by the board as an outstanding state protected wetland, the owner of a Class III wetland may petition the board for rescission of the designation if the owner can demonstrate important social or economic needs that warrant adverse effects to the wetland. In its review of the petition, the board shall give great weight to a resolution of the legislative body of the municipality or county in which the Class III wetland is located describing important social or economic needs, the accomplishment of which would necessitate adverse effects to the wetland.

IN Code § 13-18-22-10. Authority of department.

(a) Except as provided in subsection (b), the department has no authority over the:

(1) filling;

(2) draining; or

(3) elimination by other means;

before January 1, 2004, of a wetland that would have been an isolated wetland.

(b) The department has authority over wetland activities in an isolated wetland, including an exempt isolated wetland, that are subject to the provisions of:

(1) a National Pollutant Discharge Elimination System (NPDES) permit issued by the department under 33 U.S.C. 1342;



- (2) an agreed order under IC 13-30-3-3, consent order, or consent decree executed by the department and the regulated party;
- (3) an order issued under IC 13-30-3-4; or
- (4) a judgment of a court enforcing or upholding an enforcement order or decree described in subdivision (2) or (3);

that became effective before January 1, 2004.

IN Code § 13-18-22-11. Land no longer subject to federal wetland conservation rules.

When land referred to in IC 13-11-2-74.5(a)(7) is no longer subject to United States Department of Agriculture wetland conservation rules:

- (1) isolated wetlands located on the land are subject to this chapter; and
- (2) any past wetland activities in the isolated wetlands located on the land become subject to this chapter, unless the wetland activities were in compliance with United States Department of Agriculture wetland conservation rules.

IN Code § 13-18-22-12. Applicant for site-specific approval.

(a) A person seeking to engage in maintenance of a field tile within a Class III wetland under section 4(a)(2) of this chapter may apply to the department for a site-specific approval for the activity in accordance with this section.

(b) An applicant for a site-specific approval under this section must provide information to the department on the need to perform the activity described in subsection (a), including the following:

- (1) Information showing the location and area needed to be disturbed within the Class III wetland.
- (2) Lack of reasonable alternatives to the disturbance of the area referred to in subdivision (1).

